

REMARKS

Initially, Applicants would like to thank the Examiner for acknowledging the allowability of Claims 20-30 and 33 as set forth in the *Ex parte Quayle* Action mailed January 11, 2007. In the *Ex parte Quayle* Action, the Examiner has indicated that the Information Disclosure Statement filed December 19, 2006 (hereinafter the December 19, 2006 IDS) has been placed in the file but has not been considered. In particular, the Examiner contends that the December 19, 2006 IDS fails to comply with five (5) requirements of 37 C.F.R. § 1.98(a)(1). Applicants respectfully traverse these objections for the reasons set forth below.

As set forth in the *Ex parte Quayle* action, 37 C.F.R. § 1.98(a)(1) requires the following: (1) a list of all patents, publications, applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the information disclosure statement is being submitted on each page of the list; (4) a column that provides a space next to each document to be considered, for the examiner's initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. Applicants respectfully submit that the December 19, 2006 IDS does in fact satisfy each of these requirements.

First, the December 19, 2006 IDS does in fact contain a listing of the information submitted. This listing is evidenced by Tables 1 and 2 spanning pages two (2) through thirteen (13) of the December 19, 2006 IDS. Further, although 37 C.F.R. § 1.98(a)(1) also requires U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents, Applicants remind the Examiner that no U.S. patents or published applications were submitted and, as such, this requirement is not relevant to any determination of compliance of the December 19, 2006 IDS. With respect to the third requirement, Applicants note that the application serial number of the instant application in which the supplemental information disclosure statement was being submitted (10/081,116) is in fact included on each page of the listing, as evidenced by the heading on pages two (2) through thirteen (13) of the December 19, 2006 IDS. With respect to the fourth requirement, Applicant also reminds the

Examiner that 37 C.F.R. § 1.98(a)(1)(ii) only requires a column that provides a space next to each document to be considered and does not require the column to be completely blank or specifically labeled for the Examiner's initials. To that end, Applicants submit that the left most columns in Tables 1 and 2 on each page of the listing do in fact provide sufficient space next to each document to be considered for the Examiner's initials. Still further, with respect to the fifth requirement of 37 C.F.R. § 1.98(a)(1), Applicants also respectfully submit that the December 19, 2006 IDS does in fact contain a heading that clearly indicates that the list is an information disclosure statement, as evidenced by the heading on page 1, entitled "**SUPPLEMENTAL INFORMATION DISCLOSURE STATEMENT.**"

The Examiner further contends that Applicant has not provided a legible copy of each publication or that portion which caused it to be listed. To that end, Tables 1 and 2 in the December 19, 2006 IDS contain a listing of court docket entries for the respective dockets of two litigation matters. Certain documents corresponding to the court docket entries are not publicly available to the undersigned. These documents were however identified by an asterisk in each of Tables 1 and 2 as specifically not being included. Legible copies of the remaining documents listed in Tables 1 and 2 were however provided, as evidenced by their having been electronically scanned and their current availability on the PAIR system.

Lastly, the Examiner has requested statements of particular relevance of the voluminous prior art, as submitted, as it pertains to the invention as claimed since the prior art, as filed, does not include any explanation of the relevance, as it is presently understood by the individual designated in 37 C.F.R. § 1.56(c) most knowledgeable about the content of the information. First, Applicants note that the information submitted is not "prior art" as designated by the Examiner. Rather, the information submitted in the December 19, 2006 contained the available record from two litigation matters involving subject matter related to the subject matter for which the instant application is being sought. Unless any information submitted in the December 19, 2006 IDS was available prior to the earliest priority date of the instant application, the information submitted should not be considered "prior art."

Further, in response to the Examiner's request, Applicants are not aware of any rule that requires the submission of statements of particular relevance of voluminous information. While

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37 C.F.R. § 1.98(a)(3)(i) does require a concise explanation of the relevance, as it is presently understood by the individual designated in 37 CFR 1.56(c) most knowledgeable about the content of the information, this requirement is specifically directed to information that is not in the English language. Applicants note that the information submitted in the December 19, 2006 IDS was in the English language and, as such, Applicants are not required to submit the requested explanation in order for the information to be considered.

However, notwithstanding Applicants understanding of the 37.C.F.R. § 1.98(a)(3)(i), M.P.E.P. section 2001.06(c) states that where the subject matter for which a patent is being sought is or has been involved in litigation, the existence of such litigation and any other material information arising therefrom must be brought to the attention of the U.S. Patent and Trademark Office. The information contained in the December 19, 2006 IDS was submitted to satisfy the requirements prescribed by section 2001.06(c) of the M.P.E.P. Furthermore, rather than Applicant engaging in a determination of what, if any, information from the cited litigations an Examiner may deem to be material, Applicant has in an abundance of caution submitted the entire available record for the Examiner's consideration and determination.

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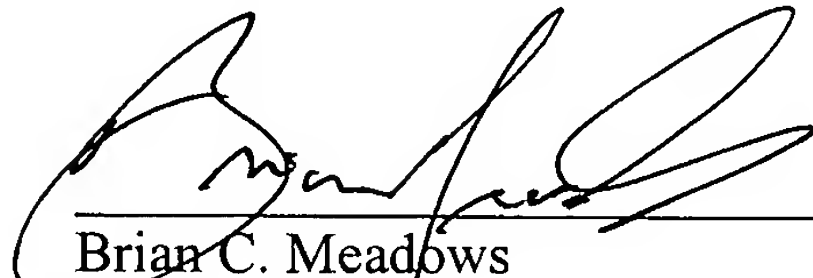
CONCLUSION

In view of the foregoing Remarks, Applicants believe that the December 19, 2006 IDS was submitted in compliance with the requirements of 37.C.F.R. § 1.98(a)(1). Accordingly, consideration of the information submitted therewith and making the same of record in the prosecution of the above-referenced application are respectfully requested.

Because a response to the *Ex parte Quayle* Action was due by March 11, 2007, enclosed is a Request for a Four Month Extension of Time and a credit card payment form PTO-2038 authorizing payment in the amount of \$1590.00 for the fee required under 37 C.F.R. § 1.17(a)(4). No additional fees are believed due in connection with this submission. However, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 14-0629.

Respectfully submitted,

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CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this correspondence, including any items indicated as attached or included, is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, on the date indicated below.

  
Brian C. Meadows

July 11, 2007  
Date